TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 570.

THOMAS C. SWEENEY, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

FILED OCTOBER 7, 1871.

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1 *Petition.—Filed Oct.* 6, 1868.

U. S. Court of Claims. December term, 1868.

THOMAS C. SWEENEY
vs.
THE UNITED STATES. } No. 3632.

To the honorable Court of Claims:

The petition of Thomas C. Sweeney, a citizen of the State of West Virginia, respectfully represents that, in the month of March, 1863, he was the owner and in possesssion of the steamer "Ben Franklin," then at Louisville, in the State of Kentucky. That the officers of the Quartermaster's Department had an urgent and immediate need for the use of said steamer in the military service of the United States, and a peremptory demand was made upon your petitioner by Captain John H. Ferry, an officer of the Quartermaster's Department, representing the United States in that behalf, to place said steamer in the public service. And the officer so representing the United States offered to your petitioner the alternative of a written contract, at the rate of one hundred and seventy-five ($175 00) dollars per day or an impressment of the vessel. At this time the reasonable value of the charter of the said boat was fully two hundred ($200 00) dollars per day, and your petitioner endeavored to insist that this sum should be allowed him in the written contract; but the quartermaster, representing the United States, refused to allow any greater sum than one hundred and seventy-five dollars per day. Thereupon, to avoid the impressment of his boat, your petitioner, on the 3d of March, 1863, entered into a written contract with the said quartermaster, a copy of which is hereto annexed and made a part of this petition, and marked "Exhibit A."

2 Your petitioner having been dissatisfied with the terms of the said contract as to the price allowed for the use of the boat, on the 21st of March, 1863, applied to Col. Thomas Swords, the senior quartermaster in charge of the department, for a modification of the said contract, so that he should be allowed the sum of two hundred dollars per day for the use of said steamer. This application was favorably considered, and, on the 30th of March, 1863, Col. Swords consented, in writing, to this modification of the said contract, a copy of which communication is hereto annexed, and marked "Exhibit B."

And your petitioner saith that, in pursuance of said contract and the modification thereof, he was entitled to receive the sum of two hundred dollars for each and every day the said vessel should be employed in the service of the United States. And petitioner saith that said vessel was so employed from the said 3d day of March, 1863, until the 17th of September, 1863, and was so reported and duly certified by the officers of the Quartermaster's Department in charge thereof. That no other or different contract was ever made for the use and services of said vessel than is herein set forth; and that your petitioner, his servants, agents, and employees, in all respects, complied with all the stipulations of said contract on his part to be performed, whereby he became entitled to have and receive from the United States the sum of $200 00 per day for one hundred and ninety-eight days, in all, the sum of $39,600 00. That he was paid the sum of $200 per day from the 3d of March, 1863, to the 20th of March, 1863; and that subsequent to that time, to wit, from the 20th of March, 1863, to the 17th of September,

1863, one hundred and eighty-one (181) days, he was paid at the rate of $145 00 per day; and that there is now justly due him the sum of fifty-five ($55 00) dollars per day for the said 181 days, in all, the sum of nine thousand nine hundred and fifty-five ($9,955 00) dollars.

Your petitioner further shows that he has at all times borne true allegiance to the Government of the United States; and that he has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government; and he prays the judgment of this honorable court for the said sum of nine thousand nine hundred and fifty-five dollars, ($9,955 00,) and for such other and further relief as the nature of the case may show he is entitled to.

HUGHES, DENVER & PECK,
Solicitors for Claimant.

3 STATE OF LOUISIANA,
County of Orleans, ss:

Tho's C. Sweeney, being duly sworn, deposeth that he is the claimant in the foregoing petition; that no assignment or transfer of said claim, or any part thereof, or any interest therein, has been made, except as in said petition is stated; that claimant is justly entitled to the amount therein claimed from the United States, after allowing all just credits and off-sets, and that he believes the facts as stated in said petition are true.

T. C. SWEENEY.

Sworn and subscribed to before me, a notary public in and for said parish and State.

Witness my hand and notarial seal this fifteenth day of March, A. D. 1869.

[SEAL.] J. MORRIS DAY,
Notary Public.

Claimant's address is—
Claimant solicitors—Hughes, Denver & Peck, 258 G streets, Washington, D. C.

EXHIBIT A.

This charter-party, made and entered into at the city of Louisville, Kentucky, this 3d day of March, 12 o'clock m., in the year of our Lord one thousand eight hundred and sixty-three, between Captain Jno. H. Ferry, assistant quartermaster, for and on behalf of the United States of America, and T. C. Sweeney for owners steamer "Ben Franklin," witnesseth:

First. That the said Sweeney hereby agrees to charter to the United States the steamer Ben Franklin, and to furnish during the whole
4 time of the employment of said steamer, in addition to the usual number of officers and firemen, at least eight deck hands to load and unload said steamer.

Second. The said Sweeney hereby covenants and agrees, that the master in command of said boat during the time the same is in the employ of the United States, shall obey all lawful orders of the officer of the Quartermaster's Department having said boat in charge, and to have it at all times in readiness for service, until discharged by the proper authority.

Third. The said Capt. Jno. H. Ferry, A. Q. M., on the part of the United States, agrees that the said Sweeney shall be paid for said steamer at the rate of one hundred and seventy-five dollars ($175 00)

per day, for each and every day of twenty-four hours the said steamer may be employed in the service of the United States. It being expressly agreed that no member of Congress shall be admitted to any share or part herein, nor to any benefit to arise therefrom. The United States to pay for fuel and lockage tolls. A reasonable time to be allowed for the return of the said boat to Louisville, Ky., from the place of discharge.

Payment to be made on the certificate of the officer of the Quartermaster's Department having said boat in charge, provided the Quartermaster's Department has funds on hand, and if not, then as soon thereafter as funds may be received for that purpose.

Fourth. Should the above-mentioned boat be injured, captured or destroyed by the enemy, or by any event not incident to the navigation of the river or rivers on which it may be employed, then, and in that event, the United States shall make a fair and just compensation for the injury or destruction of said boat.

In witness whereof the parties hereto have set their hands and seals the day and year first above written.

(Signed) JNO. H. FERRY, [SEAL.]
Captain and A. Q. M.

(Signed) T. C. SWEENEY, [SEAL.]
Captain and Owner.

In presence of—
(Signed) E. P. FONTAINE.

Approved.
(Signed) W. JENKINS,
Captain and A. Q. M.

5 EXHIBIT B.

ASS'T Q. M. GEN'L OFFICE,
Cincinnati, Ohio, March 30, 1863.

T. SWEENEY, Esq., *Wheeling, Va.*

DEAR SIR: Your letter of the 21st inst., relative to the rate of pay of the steamboat "Ben Franklin," was received and referred to Captain Jenkins, the quartermaster in charge at Louisville, by whom it has been returned, with the endorsement that the S. B. "Ben Franklin," rating with the "Commercial," "Tempest," "Lancaster No. 4," &c., &c., will receive $200 per day.

Very respectfully, your obedient servant,
(Signed) THO'S SWORDS,
A. Q. M. Gen'l.

6 In the United States Court of Claims. December term, A. D. 1868.

THOMAS C. SWEENEY
vs.
THE UNITED STATES. } No 3622. Filed June 15, 1869.

And the said defendants, by the Attorney General, come and make answer to the petition of the claimant herein; and, not confessing the same, or any part thereof, deny each and every the allegations therein contained, and call for strict proof of the same.

And as to so much of the said petition as sets forth and avers that the said United States are indebted to the said claimant in the sum of

$9,955 00, the said defendants say that they are not indebted to the said claimant in the said sum of money, nor any part thereof.

And as to so much of the said petition as avers that the said claimant has at all times borne true faith and allegiance to the Government of the United States, and never voluntarily aided, abetted, or given encouragement to rebellion against the said Government, the said defendants deny the said allegation.

T. LYLE DICKEY,
Assistant Attorney General.

7 In the Court of Claims of the United States. Dec. term, 1869.

THOMAS C. SWEENEY
vs.
THE UNITED STATES. } No. 3622.

Special plea for defendants.

And the said defendants, by their Attorney General, now come, and by leave of court, (as expressed in Rule IX,) say that the said claimant ought not further to maintain said action, because—

1. While the claim presented in this petition is such as is ordinarily settled in an Executive Department, the petition does not set forth the decision thereon of the proper Department of the Government to which application was (as is alleged) made for the payment of the claim. (Rule II.)

2. The petition does not set forth a full statement of the action, on the claim therein presented, by a Department of the Government, as required by section 1 of the act of February 4, 1855.

3. The evidence in the case does not show that any such application has ever been made to any Department of the Government, whether with or without success, or any action whatever thereon, without which action this court has no lawful jurisdiction in this case.

And the said defendants pray judgment, &c.

THOMAS H. TALBOT,
Assistant Attorney General.

Filed Jan'y 20, 1870.

8 In the Court of Claims.

THOMAS C. SWEENEY
vs.
THE UNITED STATES. } 3622.

And now, to wit, 16th of May, A. D. 1870, the court, upon due consideration of the premises, find in favor of the defendants, and do order, adjudge, and decree that the said claimant take nothing by his suit, and that his petition be dismissed.

By the court.

A true copy of record.

9 In the Court of Claims. Dec. term, 1869.

THOMAS C. SWEENEY
vs.
THE UNITED STATES. } 3622.

Now comes the said claimant, by his solicitors, in open court, and

prays an appeal from the judgment of the court heretofore rendered in this cause.

HUGHES, DENVER & PECK,
Solicitors for Claimant.

Filed in the clerk's office, May 16, 1870.

Ordered, That the appeal as prayed in the case of Thomas C. Sweeney vs. The United States, 3622, be allowed.

By the court.

MAY 17, 1870.

10 Court of Claims.

THOMAS C. SWEENEY
vs.
THE UNITED STATES.

This case coming on to be heard on the 16th day of May, 1870, before the Court of Claims, the court, upon the proofs and evidence, make and determine the following findings of fact and conclusions of law:

I. On the 3rd of March, 1863, the claimant and the defendants, by Captain John H. Ferry, an assistant quartermaster, executed the charter-party of the steamer "Ben Franklin," described in and annexed to the petition, the rate agreed upon being $175 a day, and
11 no definite time being specified in the charter.

The claimant subsequently complained of the rate allowed, and the quartermaster at Louisville, by an endorsement on the application, directed that the boat be allowed $200 per day. She remained apparently under the control of Captain Ferry, and was borne upon his returns for the months of March and April, but was, in fact, paid at the rate of $200 per day only up to, and including, the 20th of March, 1863. After the month of April, 1863, the steamer was not reported by, nor borne upon the returns of, the assistant quartermaster, Captain Ferry.

II. During the month of March, 1863, the steamer was ordered, by Captain Ferry, to Milliken's Bend, in the Mississippi River, whither
12 she proceeded, and in so doing passed within the limits of another military department. In some way, not shown by the evidence, she came under the control of Captain Charles Parsons, an assistant quartermaster at St. Louis, where she remained in the service of the defendants until the 17th of September, 1863, when she was discharged. It was not conceded by Captain Parsons that the steamer was retained in the service under the charter-party referred to in the first-finding of fact. On the contrary, her account was stated by Captain Parsons, on the 15th of September, 1863, (running from the 21st of March to the 31st of July, 1863,) at $140 a day. This account was paid by Captain Parsons, and receipted for by the claimant on the 22nd of October following. Subsequent accounts for subsequent services were
13 also stated and paid by Captain Parsons, and receipted for by the claimant, none of which accounts or receipts refer in terms to any charter-party. The owner remonstrated at the rate allowed, and, on the 19th of December, 1863, a settlement was made with him by Captain Parsons, by allowing to him, from the 21st of March to the 31st of August, five dollars ($5) per day, which amount was received and receipted for by the claimant, "as in full of the above account," being the account for the steamer's services.

But no release under seal was executed by the claimant, nor was any

other consideration given by the defendants than that expressed, of five dollars a day for the period named.

III. The claimant has never presented this claim to the War Department, nor to the Treasury Department, nor to any bureau thereof,
14 nor to any officer of the Quartermaster Department, except Captain Parsons, to whom it was presented at the time of the compromise set forth in the second finding of fact.

IV. The claimant has always borne true allegiance to the Government of the United States, and never gave aid or comfort to the rebellion, nor to persons engaged therein.

And on the foregoing findings of fact the Court of Claims, as conclusions of law, decides:

1st. That the facts set forth in the second finding, rendered the demand of the claimant a doubtful and disputed claim which might be the subject of a valid parol compromise, and that the payment of the sum of five dollars a day for the period named, and in the manner set
15 forth, constituted a valid and binding compromise, which bars the claimant's action.

2nd. That the defendants are by law entitled to have all claims and demands which are ordinarily settled by their accounting and auditing departments, presented to such departments, and if found to be due, paid out of the specific appropriations of Congress made for specific classes of the national indebtedness. That the Court of Claims has authority by law to enforce its standing rule of practice which provides that: "in every case where the claim is such as is ordinarily settled in any Executive Department, the petition shall show that application for its allowance has been made to that Department and without success."

And that the claimant in this case having failed to present his
16 demand to any Department of the Government as set forth in the 3rd finding, should not recover.

3rd. That upon all the facts set forth the petition should be dismissed.

By the court.

17 In the Court of Claims.

THOMAS C. SWEENEY, *vs.* THE UNITED STATES. } No. 3622.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the forgoing are true transcripts of the pleadings in the above entitled cause, and the final judgment of the court thereon; of the application of the claimant's counsel for the allowance of an appeal, as filed in the clerk's office, May 17, 1870, and of the order of the court of 17 May, 1870, allowing the same; of the findings of fact, and conclusions of law thereon, on which the court founded its judgment.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Washington, this 30th day of June, 1871.

[SEAL.] JOHN RANDOLPH,
Ass't Clerk Court of Claims.

(Indorsement on cover:) No. 570. Thomas C. Sweeny, appellant, vs. The United States. Court of Claims. Filed 7th October, 1871.

O

In the Supreme Court of the United States.

DECEMBER TERM, 1872.

No. 116.

THOMAS C. SWEENEY,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR THE APPELLANT.

It appears in the record that the appellant, who owned a steamer called the "Ben Franklin," running on the Ohio river, made a contract in writing with Capt. John H. Ferry, a quartermaster in the service of the United States, to put his boat into the service of the Government, at the rate of $175 per day.

But the appellant complained of this rate of compensation and demanded more.

Thereupon, Col. Swords, Asst. Quartermaster General, and the superior officer of Capt. Ferry, by written agreement or order, increased the rate of compensation for the use of the boat, to $200 per day.

This ended the written agreements.

Afterwards, another quartermaster named Parsons, ranking as a captain, and inferior in grade to Col. Swords, obtained control of the boat in another department, in some

manner not explained in the record, leaving it to be inferred that it was by a *quasi* impressment.

This latter quartermaster did not recognize the previously subsisting and uncancelled contract, in writing, of the United States with the appellant, made by competent authority, but paid for the services of the boat under an estimate of his own, and subsequently paid five dollars per day additional—the highest rate paid by him being one hundred and forty-five dollars per day, including the additional five dollars per day before mentioned.

The appellant sued in the Court of Claims *upon his written contract*, and the Court decided adversely to his claim on two grounds: first, that the payments made by Captain Parsons constituted a compromise valid and binding; and, second, that the claim should have been presented to the accounting officers of the Treasury and rejected by them, in compliance with a rule of practice of the Court of Claims, before it could be allowed in that Court.

POINTS FOR THE APPELLANT.

1st. The controversy between the owner of the steamer and Captain Ferry, about the rate of compensation provided in the original written contract, was a legitimate subject of compromise.

Such compromise having been made by a written modification of the contract, made by Col. Swords, who had competent authority to make it, was valid and binding on the United States.

2d. Since it appears affirmatively that Capt. Parsons did not recognize the written contract, and does *not* appear that he settled and paid any claim for damages for breach of the same, the reasonable inference is that he impressed a boat already in the service of the Government, or took it wrongfully, or by order of some military commander—*thus leaving the written contract intact*, and the right to claim the price therein reserved, a subsisting right which was never expressly surrendered.

3d. The decision of the Court of Claims in favor of the jurisdiction of the accounting officers of the Treasury, though doubtless correct as a general proposition, is not competent to take away their own jurisdiction expressly conferred by statute.

A rule of Court cannot deprive a citizen of the right to sue, or put him in a position to have the statute of limitations bar his suit, when that right is expressly conferred by statute without qualification. Further, said decision is in conflict with the decisions of the Supreme Court of the United States on the subject of compromises made with commissioners.

JAMES HUGHES,
of Counsel for Appellant.

In the Supreme Court of the United States.

DECEMBER TERM, 1872.

JAMES C. SWEENEY
vs.
THE UNITED STATES. } No. 116.

Appeal from the Court of Claims.

BRIEF FOR THE UNITED STATES.

ARGUMENT.

The Court of Claims find, as facts, that Captain Parsons never admitted that the steamer Ben Franklin was retained in the service of the United States under the original charter-party. On the contrary, her account was stated by him at $140 a day. This account was paid by Captain Parsons, and receipted for by the claimant. On the 22d of October, 1863, subsequent accounts for subsequent services were also stated, paid by Parsons, and receipted for by the claimant; none of which accounts or receipts refer in terms to any charter-party. The owner remonstrated at the rate allowed, and on the 19th of December, 1863, a settlement was made with him by Captain Parsons, by allowing to him, from the 21st of March to the 31st of August, five dollars per day; which amount was received and receipted for by the claimant "as in full of

the above account," being the account for the steamer's services. (Record, page 5.)

This brings the case within the principle repeatedly decided by the court, that where a claim is disputed by the Government, and the claimant accepts a certain sum in settlement thereof and gives a receipt in full therefor, it is a bar to a subsequent action for any residue claimed to be due in the Court of Claims.

United States *vs.* Clyde, 13 Wallace, 35.

United States *vs.* Justice.

Smith *vs.* United States.

C. H. HILL,
Assistant Attorney General.